

**PROGRAMMATIC AGREEMENT  
AMONGST THE  
CITY OF NASHUA, NEW HAMPSHIRE,  
AND  
THE NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER**

WHEREAS, the City of Nashua, New Hampshire (the City) proposes to administer certain federal programs, including the Community Development Block Grant Program, the HOME Investment Partnerships Program and the Lead Based Paint Hazard Control Program, with funds from the U.S. Department of Housing and Urban Development, under Title I of the Housing and Community Development Act of 1974 and the Housing Act of 1937, Title II of the National Affordable Housing Act of 1990 and Title X of the Housing and Community Development Act of 1992 respectively (hereafter the "City's Federal Programs"); and

WHEREAS, for the purposes of this Programmatic Agreement (PA), the City's Federal Programs makes funding available to assist City departments, individuals, for profit businesses and not for profit organizations implement projects and programs including, housing improvement initiatives, public facilities, handicap accessibility improvement and economic development initiatives in the City of Nashua, New Hampshire; and

WHEREAS, the City has determined that the administration of its Federal Programs may have an effect upon properties that are listed or eligible for listing in the National Register of Historic Places and has consulted with the New Hampshire State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to 36 CFR 800.13 of the Council's regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).

NOW THEREFORE, the City and the New Hampshire SHPO agree that the programs shall be administered in accordance with the following stipulations to satisfy the City's Section 106 responsibilities for individual undertakings of the program:

**STIPULATIONS**

The City will ensure that the following measures are carried out:

**I. IDENTIFICATION OF PROPERTIES**

In accordance with 36 CFR 800.4, the City in consultation with the New Hampshire SHPO will identify historic properties.

**A. Level of Identification Efforts:**

1. City will complete reconnaissance level forms (items #1-40) according to the New Hampshire SHPO's guide. "How to Complete the New Hampshire Individual Inventory Form" and submit to SHPO for review. SHPO may request intensive level or full survey form (41-48) only as needed to determine whether a property is eligible for listing in the National Register or (Items 43,47) if not tax parcel.
2. SHPO's site files and previous reviews are available for the City to review prior to making a reconnaissance level survey. Survey information will be made available to the City electronically. City agrees that the data will not be displayed or shared publicly or in map form. The data will not be shared outside of the programs reviewed under this PA without the express permission of the SHPO. The City understands that this document is a static document and will not contain information submitted to or reviewed by the SHPO after the date on this document. Therefore, it will be the responsibility of the City to update this information at regular intervals not less than 6 months apart. Failure to update file information regularly may result in revocation of the use of the electronic file.
3. City may choose to complete full inventory forms in order to expedite review.
4. City will submit inventory forms as soon as target properties are identified in order to expedite review and project schedules.
5. If ground disturbing activities are proposed (other than lateral water and sewer line replacement), the City will consult with the SHPO prior to any such activity to determine if the activity has the potential to affect National Register or National Register eligible archaeological properties. If such potential exists, the City will conduct an archaeological survey in accordance with 36 CFR 66, Appendices B and C.

## **PROGRAMMATIC AGREEMENT – CITY OF NASHUA, NEW HAMPSHIRE ENTITLEMENT PROGRAMS**

6. If archaeological resources are found which meet the National Register criteria, they will be avoided or preserved in place whenever feasible. If this is not feasible, the City will consult with the SHPO to develop and implement a treatment consistent with the Council's handbook, Treatment of Archaeological Properties, and approved by the SHPO.
- B. Due to their non-adverse impacts, the activities listed in Appendix I are exempt from SHPO's review and do not require further consultation with the SHPO.

### **II. TREATMENT**

Properties that are listed on the National Register or that are considered to be individually eligible for the National Register, or that are located within a district and considered to be eligible for the National Register, will be treated in the following manner:

- A. Properties that are to be rehabilitated in accordance with the recommended approaches in *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Rehabilitating Historic Buildings* (as revised 1995 and 2001).
- B. Prior to undertaking any activities that are not exempt under STIPULATION I, B, the City will forward information following request for project review (RPR) procedures on the rehabilitation projects (including work write-ups and photographs, as necessary) to SHPO for review and concurrence to ensure that above noted standards are being met.
- C. If the above noted standards cannot be met, or if demolition is proposed, or if the proposed activity may have an indirect effect on such properties, prior to taking any action, the City will consult with the SHPO and initiate the procedures set forth at 36 CFR 800.6.

### **III. PUBLIC INVOLVEMENT**

Each year the City will notify the public of and make available for public inspection documentation on the City's current Federal Programs. Included in this documentation will be general information on the funds; information on identified historic properties which might be affected by these activities; the amount of funds available in the current program year; and how interested persons can receive further information on the programs.

## **ADMINISTRATIVE CONDITIONS**

### **I. PERSONNEL QUALIFICATIONS**

For projects that have been determined to have an adverse effect to National Register properties, the City shall ensure that all historic preservation work carried out pursuant to this PA will be by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Architectural Historian Professionals (48 FR 44738-9). The City shall ensure that all archaeological investigations carried out pursuant to this Agreement will be by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards for Archaeologists (48 FR 44738-9).

### **II. LATE DISCOVERY**

If any unanticipated discoveries of historic properties or archaeological sites are encountered during any of the work covered under this PA, the City shall suspend work in the area of the discovery and shall comply with 36 CFR 800.6(c)(6). The City will notify the SHPO within twenty-four (24) hours of the discovery. The City and the SHPO will meet at the location within seventy-two (72) hours of the SHPO's initial notification to determine appropriate treatment of the discovery prior to the resumption of construction activities in the area of the discovery.

### **III. AMENDMENTS**

Any party to this PA may propose that the PA be amended, whereupon the parties shall consult with one another to consider such an amendment in accordance with 36 CFR 800.6(c)(7).

### **IV. RESOLVING OBJECTIONS**

- A. Should any party to this PA object in writing to the City regarding any action carried out or proposed with respect to any work covered under this agreement or to the manner in which such work is being implemented under this PA, the City shall consult with the objecting party to resolve the objection. If after initiating such consultation, the City determines that the objection cannot be resolved through consultation, the City shall forward all documentation relevant to the objection to the Council including the City's proposed response to the objection. Within thirty (30) days after receipt of all pertinent documentation, the Council shall exercise one of the following options:

## **PROGRAMMATIC AGREEMENT – CITY OF NASHUA, NEW HAMPSHIRE ENTITLEMENT PROGRAMS**

1. Advise the City that the Council concurs in the City's proposed response to the objection, whereupon the City shall respond to the objection accordingly; or
  2. Provide the City with recommendations, which the City shall take into account in reaching a final decision regarding its response to the objection; or
  3. Notify the City that the objection will be referred for comment pursuant to 36 CFR 800.7 and proceed to refer the objection and comment. The resulting comment shall be taken into account by the City in accordance with 36 CFR 800.7(c)(4) and Part 110(1) of the NHPA.
- B. Should the Council not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the City may assume the Council's concurrence in its proposed response to the objections.
- C. The City shall take into account any Council recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the City's responsibility to carry out all actions under this PA that are not the subjects of the objection shall remain unchanged.

### **V. RESOLUTION OF OBJECTIONS BY THE PUBLIC**

Should an objection pertaining to historic preservation or implementation of the items of this PA be raised by a member of the public in a timely and substantive manner, the city shall notify the parties to this PA and take the objection into account, consulting with the objector and, should the objector so request, with any of the parties to this PA to resolve the objection.

### **VI. MONITORING AND REPORTING**

Each year following the execution of this MOA until it expires or is terminated, the City shall provide all parties to this MOA a spreadsheet summary report outlining work exempted pursuant to its terms. Such report shall include the type of project; reasons under which it was exempted from SHPO review; any other related information deemed appropriate and any disputes and objections received in the City's efforts to carry out the terms of this MOA.

### **VII. SUNSETTING/DURATION**

If the terms of this PA have not been implemented by five (5) years from date of signed PA, this PA shall be considered null and void. In such event the City shall so notify the parties to this PA, and if it chooses to continue with the undertakings covered under this agreement, shall reinstate review of such projects in accordance with 36 CFR 800.

### **VIII. TERMINATION**

If the City determines that it cannot implement the terms of this PA, or the SHPO determines that the PA is not being properly implemented, the City or the SHPO may propose to the other parties to this PA be terminated.

The party proposing to terminate this PA shall so notify all parties to this PA, explaining the reasons for termination and affording them at least thirty (30) days to consult and seek alternatives to termination. The parties shall then consult.

Should consultation fail, the City or the SHPO may terminate the PA by so notifying all parties.

A. Should this PA be terminated, the City shall either:

1. Consult in accordance with 36 CFR 800.6(a)(1) to develop a new PA; or
2. Request the comments of the Council pursuant to 36 CFR 800.7(a)(1). The Council shall have forty-five (45) days to respond with comments.

B. The City and the Council may conclude the Section 106 process with an PA between them if the SHPO terminates consultation in accordance with 36 CFR 800.7(a)(2).

**PROGRAMMATIC AGREEMENT – CITY OF NASHUA, NEW HAMPSHIRE ENTITLEMENT PROGRAMS**

Execution of this Programmatic Agreement and carrying out its terms evidences that the City of Nashua has afforded the Council a reasonable opportunity to comment on this undertaking and has satisfied its Section 106 responsibilities for all individual undertakings of the program.

**THE CITY OF NASHUA, NEW HAMPSHIRE:**

By: \_\_\_\_\_

Donnalee Lozeau, Mayor

Date: \_\_\_\_\_

December 4, 2012

**NEW HAMPSHIRE STATE HISTORIC PRESERVATION OFFICER:**

By: \_\_\_\_\_

Elizabeth H. Muzzey, NH State Historic Preservation Officer

Date: \_\_\_\_\_

11/29/12

**APPENDIX I**

The following activities **DO NOT** require review by the SHPO, pursuant to "Stipulation I, B":

1. Rehabilitation of a non-historic structure, except when a proposed addition may impact a surrounding or adjacent historic district.
2. Work on any building that is less than 50 years of age.
3. Mechanical systems when repair, replacement and installation of the following systems does not affect the exterior or require the installation of new ducts through the interior:
  - a. electrical work;
  - b. plumbing pipes and fixtures;
  - c. heating system improvements;
  - d. installation of fire detectors;
  - e. ventilation systems;
  - f. upgrade of bathroom and kitchen as required to remove lead hazards and meet current housing codes. Where work is contained within the existing bathroom or kitchen.
4. Roof repair or replacement of historic wood and asphalt roofing with material which closely matches the existing material and form. Cement asbestos shingles may be replaced with asphalt-based shingles. Repair or replacement of other kinds of historic roofing material (including metal, slate and ceramic tile) ***must be submitted to the SHPO for review and concurrence.***
5. Repair, replacement, or installation of gutters and downspouts.
6. Installation of insulation in ceilings, attic, and basement spaces provided it is installed with appropriate ventilation and vapor barriers and within wall cavities provided that decorative interior plaster, woodwork, or exterior siding is not altered.
7. Replacement of suspended ceiling tile.
8. Repainting of exterior surfaces, provided that destructive surface preparation treatments, including, but not limited to water blasting, sandblasting, and chemical cleaning, are ***not*** used.
9. Repair of porches, cornices, exterior wooden siding, doors, balustrades, stairs, or other trim when the repair is done ***in-kind*** to closely match existing material and form.
10. Removing and replacing existing window sash with new vinyl or aluminum clad wood components to match the visual components of the historic sash, ***so long as the windows are not character-defining.***
11. Caulking, weather stripping, re-glazing, and repainting of windows.
12. Repair, replacement or installation of storm windows (exterior, interior, metal, or wood only), provided they match the shape and size of historic windows, and that the meeting rail coincides with that of the historic window. Color should match trim, if possible.
13. Installation of new window jambs or jamb liners.
14. Repair or replacement of awnings when work is done in-kind to closely match existing materials and form.
15. Removing and replacing interior and exterior doors with matching components. Original front entrance doors to be labeled, plastic wrapped and stored on site. New exterior door to closely match existing style.

**PROGRAMMATIC AGREEMENT – CITY OF NASHUA, NEW HAMPSHIRE ENTITLEMENT PROGRAMS**

16. Replacement of non-significant flat stock trim with identical flat-stock trim ("clamshell" molding is **NOT** acceptable).
17. Treatment of interior surfaces (floors, walls, ceilings, or woodwork), when work is limited to repainting, refinishing, repapering, replacing drywall with drywall, replacing failing asbestos plaster with plaster or drywall, or replacement/installation of carpet, sheet (resilient) or tile flooring, provided that the original flooring is not damaged by installation of the new surface.
18. Interior lead hazard control when it is limited to washing, scraping, and repainting, wallpapering, and chemical stripping of lead-painted surfaces, in a manner that meets applicable state and federal requirements.
19. Lead hazard control of bare soil when conducted in a manner that meets applicable state and federal requirements.
20. Repair or replacement of fencing when work is done **in-kind** to closely match existing material and form.
21. Repair or replacement of water, gas, storm, and sewer lines if it occurs within the dimensions of the original trench.
22. Repair or replacement of existing roads, driveways, sidewalks, and curbs provided that work is done **in-kind** to closely match existing materials and form, and there are only minimal changes in dimensions or configuration of these features.
23. Interior improvements required to bring buildings into compliance with the Americans with Disabilities Act (ADA).